

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JAMES R. COWART, #L5075

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:05cv123DCB-JCS

MISSISSIPPI DEPARTMENT OF CORRECTIONS, et al.

DEFENDANTS

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court on the plaintiff's motion to reconsider [13-1] filed July 13, 2006, requesting that this court reconsider the Memorandum Opinion and Final Judgment filed June 15, 2006.

Even though "[t]he Federal Rules do not recognize a 'motion for reconsideration' *in haec verba*," the Fifth Circuit has held that "[i]f the motion is served within ten days of the rendition of judgment, the motion falls under Rule 59(e); if it is served after that time, it falls under Rule 60(b)." Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F.2d 167, 173 (5th Cir. 1990). Because the plaintiff's motion was filed more than 10 days after the entry of the judgment, this motion is construed as a motion pursuant to Rule 60(b) of the FEDERAL RULES OF CIVIL PROCEDURE. See Texas A&M Research Found. v. Magna Transp. Inc., 338 F.3d 394, 400 (5th Cir. 2003).

A party seeking relief under Rule 60(b) must show: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, . . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied . . .; or (6) any other reason justifying relief from the operation of the judgment. FED. R.

CIV. P. 60(b). In his motion, the plaintiff states that his facts have been misconstrued. Having review his motion, his complaint, and the opinion, this court finds that the facts were not misconstrued in the opinion and that he does not assert any of the grounds required by Rule 60(b). Therefore, this Court finds that there is no reason to alter its previous ruling. It is, therefore,

ORDERED AND ADJUDGED that plaintiff's motion to reconsider [13-1] is **denied**.

This the 20th day of July, 2006.

S/DAVID BRAMLETTE
UNITED STATES DISTRICT JUDGE